

Internal Revenue Service
District Director

Department of the Treasury

Person To Contact: [REDACTED]

Telephone: [REDACTED]

Refer Reply To: [REDACTED]

Date: JAN 18 1990

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

You were incorporated on [REDACTED]. Your purposes, as stated in your Articles of Incorporation, are: (1) to provide quality housing for low-income residents of the [REDACTED] metropolitan area; (2) to provide construction, construction management, contracting services and on-the-job training to the residential rehabilitation housing market in the [REDACTED] metropolitan area; and (3) to provide a source of on-going revenue for the [REDACTED]. [REDACTED] is an organization that is exempt from Federal income tax under Code section 501(c)(3).

Your primary activity is to accept construction work assignments from non-profit entities. These non-profit entities include [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

All charges for your services are calculated at cost, which include overhead, general, and administrative expenses. There is no evidence within your financial information that indicates that any of your funds have been used or will be used to benefit [REDACTED].

Section 501(c)(3) of the Internal Revenue Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate or intervene in any political campaign on behalf of any candidate for public office.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that to be exempt as an organization described in Code section 501(c)(3), an organization must be both organized and operated exclusively for one or

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[REDACTED]

[REDACTED]

8/23/89

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more of the purposes specified in such section. If an organization fails to meet either the organizational or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes. This position is held even though such organization is, by the terms of its articles, created for a purpose that is no broader than the purposes specified in Code section 501(c)(3). Thus, an organization that is empowered by its articles 'to engage in a manufacturing business' does not meet the organizational test regardless of the fact that its articles may state that such organization is created 'for charitable purposes within the meaning of Code section 501(c)(3)'.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as operated exclusively for one or more of the exempt purposes specified in Code section 501(c)(3) only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Revenue Ruling 72-369, 1972-2 C.B., page 245, provides that an organization that was formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under Code section 501(c)(3). This revenue ruling explains that providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for a profit. The fact that the organization's services were provided at cost and solely for exempt organizations was insufficient to characterize the organization's activities as being charitable. The organization's furnishing services at cost lacked the donative element necessary to establish that its activity was charitable.

Your purposes, as stated in your articles of incorporation, include providing construction, construction management, contracting services, and on-the-job training to the residential rehabilitation housing market in the [REDACTED] metropolitan area. Such a purpose constitutes a trade or business and is not one of the purposes specified within Code section 501(c)(3). You therefore are not organized exclusively for any of the exempt purposes specified within Code section 501(c)(3) and you do not meet the organizational test of this Code section.

[REDACTED]

Your primary activity is to accept construction work assignments from non-profit entities. All charges for your services are calculated at cost, inclusive of overhead, general, and administrative expenses. Providing construction services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that your services are provided at cost and solely for non-profit entities is not sufficient to characterize your services as being charitable. This is so because furnishing services at cost lacks the donative element necessary to establish that such services constitute a charitable activity. You therefore are operated similarly to the organization referred to above within Revenue Ruling 72-369, and you do not meet the operational test of Code section 501(c)(3). Furthermore, because there is no evidence within your financial information that your funds have been used or will be used to benefit [REDACTED] or any other organization that is exempt under Code section 501(c)(3), the facts and circumstances indicate that your receipts will be used exclusively for conducting a trade or business rather than to provide support to an organization that is exempt under Code section 501(c)(3).

Because you are not organized or operated exclusively for one or more of the exempt purposes specified within Code section 501(c)(3), you do not qualify as an organization that is exempt from Federal income tax under Code section 501(c)(3). In accordance with this determination, you are a taxable entity and are required to file Federal income tax returns on Form 1120. If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office or, if you request, at any mutually convenient District Office. If we do not hear from you within 30 days from the date of this letter, this determination will become final and a copy of this letter will be sent to the appropriate state officials in accordance with section 6104(c) of the Code.

If you do not protest this proposed determination under Code section 501(c)(3) in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code states, in part, that 'A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal

[REDACTED]

Revenue Service.

Sincerely yours,

[REDACTED]
District Director

Enclosure: Publication 892

cc: State Attorney General [REDACTED]